


PHED Committee #5  
July 21, 2008

July 17, 2008

## MEMORANDUM

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz,  Legislative Attorney

SUBJECT: Bill 15-08, Building Permit - Notice

Bill 15-08, sponsored by Councilmember Berliner, was introduced on May 6, 2008. This Bill reflects Councilmember Berliner's recommendations based on his interaction with the Infill Development Task Force.

Residents and civic associations currently learn of a building permit only after it is issued and posted on a property. A building permit applicant may be unaware of the norms of the neighborhood before submitting his or her application for a building permit. The current provisions for building permit applications are not concise, precise, and decisive. This amendment to the building permit application provision of the County Code would require an affidavit from certain applicants for certain building permits in small lot residential zones to assure notice to abutting and confronting property owners. The applicant would also be required to notify the civic and homeowners' associations (HOAs) that cover the area of the building permit. In addition, Bill 15-08 would require certain applicants to request any neighborhood design guidelines established by the relevant civic or homeowners' association, and would generally amend the provisions for a building permit application.

Since Bill 15-08 was introduced, the Infill Development Task reached an "Agreement in Principle" that recommends amendments (© pages 8-9). Councilmember Berliner supported the Agreement in Principle and amendments to Bill 15-08 that would implement those principles. (© pages 10-13 drafted by staff).

### Public Testimony

The public hearing on June 7, 2008 and the written testimony on Bill 15-08 was split. Many of those who testified against the bill mistakenly objected to neighbors having veto power over a homeowner's plans. The bill requires notice but not approval. Some residents who testified that requiring notice for a 200-foot addition to a main house was overly burdensome for the scale of the improvement. Those who spoke and submitted testimony in favor of the Bill appreciated the opportunity to be informed of changes to their neighbor's house before the construction equipment arrived on the site.

## **Staff Comments**

### **Should notice before the submission of certain building permits be required?**

Neighbors may appreciate notice before the submission of a building permit, but it will be a problem for the Department of Permitting Services (DPS). Neighbors, after getting notice, will call DPS to learn the status of a project that is not in its files. If the project exceeds the standards of the zone in some manner, it will not be permitted; however, DPS will only be in a position to make that judgment after an application is submitted.

The novice applicant often gets advice from DPS when the applicant appears at the counter with a building permit application in hand. Any applicant who did not provide notice will learn of his or her mistake only when he or she appears before DPS. This applicant would be told to give the required notice and come back to DPS no sooner than 30 days after the date the notice was given.

An alternative to requiring notice before the submission of an application would be to require notice after it is submitted but before the application is approved.

### **What proof should be required that notice was sent out?**

Bill 15-08 would require an affidavit from the applicant that: 1) neighbors were notified; and 2) any HOAs covering the site were asked for design guidelines. An affidavit is a secondary proof of action. A more direct proof of notice would be signed receipts from neighbors. Even if a signed receipt is excessive, copies of certified mail proving that the applicant sent the notice is more direct evidence than an affidavit from the applicant.

Staff recommends requiring direct proof of mailing instead of an affidavit that notice was delivered.

### **Should notice be required for 200 square foot additions?**

An addition of 200 gross square feet to a house would be a 20 foot by 10 foot room on one floor or a 10 foot by 10 foot 2-story addition. The average gross floor area in a house is approximately 2,500 square feet. An addition of 200 square feet would be an 8 percent increase in floor area to the average house. Bill 15-08 would create a burden for many homeowners for doing what most people would consider to be modest additions. Almost 800 permits were issued last year for additions between 200 square feet and 500 square feet. Requiring notice for buildings 500 square feet or larger would sharply reduce the number of applicants who had to provide notice. The following table indicates the number of permit applications for residential additions last year by the floor area of the addition.

Addition Size (in square feet)	Number of Applications
Less than 200	420
200-500	791
501-1,000	478
1,001-2,000	316
2,001-3,000	88
3,001-4,000	32
Greater than 4,000	26

Councilmember Berliner is not prepared to recommend an amendment to Bill 15-08; however, he may have a recommended amendment for the Committee's next worksession. *Staff recommends requiring notice for additions larger than 500 square feet of gross floor area.*

#### **When would notice be required?**

As introduced, notice would be required for demolition, new main buildings, and additions of more than 200 square feet of gross floor area in one-family residential zones. Councilmember Berliner would reduce the scope of the noticing requirement to infill development situations. Only lots less than 20,000 square feet in size and created by a subdivision before 1996 or by a resubdivision of 5 or fewer lots after 1996 would be required to provide notice.

#### **What happens if notice is not provided?**

DPS would not issue the permit if the provisions of Bill 15-08 are not satisfied. Just like any other provision for obtaining a building permit, if the applicant provided faulty information in obtaining a building permit, a stop work order could be issued until the notice provision is satisfied. This could mean revoking the permit in order to provide 30 days' notice before the permit is re-issued.

The possible noticing problems under Bill 15-08 would include not providing: 1) notice to all required parties; 2) notice in a timely manner; 3) the required content; and 4) an adequate affidavit.

#### **What content must be in the notice?**

Bill 15-08 requires that notice be given of the "size, height, setbacks, and exterior design of each proposed building or addition" as well as a contact name and address. Modifications to plans are common in construction projects, and such modifications may come about by voluntary agreement with neighbors after notice is given. Councilmember Berliner recommends amending the content provision to require "the non-binding building size, height, and setbacks or a non-binding drawing."

**What happens if the applicant's plans are changed after notice is given?**

Councilmember Berliner recommends amending Bill 15-08 clarify that the project description given as notice would be non-binding. The amendments recommended by Councilmember Berliner would also prohibit the appeal of an issued building permit based on changes from the descriptions in the notice. *Staff agrees that Bill 15-08 should be amended to allow modifications from the notice given to neighbors without triggering re-noticing.*

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Bill No. 15-08  
Concerning: Building Permits - Notice  
Revised: \_\_\_\_\_ Draft No. 1\_\_\_\_  
Introduced: May 6, 2008  
Expires: November 6, 2009  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. 8, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Berliner

### AN ACT to:

- (1) require applicants for certain building permits in residential zones to notify certain property owners;
- (2) require applicants for certain building permits in residential zones to request neighborhood design guidelines established by certain civic or homeowners' associations; and
- (3) generally amend the law regarding building permits.

### By amending

Montgomery County Code  
Chapter 8, Building Permits  
Section 8-24

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1        **Sec. 1. Section 8-24 is amended as follows:**

2        **8-24.        Application for building permit.**

3        (a)        **When required.** [It shall be unlawful to construct,]

4                (1)        Except as provide in paragraph (2), any person or entity who  
5                        performs construction to:

6                        (A)        enlarge, alter, remove or demolish a building; [or]

7                        (B)        change the occupancy of a building from one use group to  
8                                another requiring greater strength, exitway, or sanitary  
9                                provisions; [or to]

10                      (C)        change to a prohibited use; or

11                      (D)        [to] install or alter any equipment [for which provision is  
12                                made or the installation of which is] regulated by this  
13                                [chapter, without first filing] Chapter,

14                      must [an application with the department in writing and  
15                                obtaining] obtain the [required] permit required under this  
16                                Chapter. [therefore; except, that ordinary repairs]

17                (2)        Any ordinary repair, as defined in [section] Section 8-3, which  
18                                [do] does not involve any violation of this [chapter shall be  
19                                exempt from this provision] Chapter, does not require a permit.

20                (b)        **Form.** [Application] Each application for a permit [shall] must be  
21                                submitted on forms [prescribed] provided by the Director and [shall]  
22                                must be accompanied by the [required] fee [as prescribed by] required  
23                                under this [chapter] Chapter.

24                (c)        **Qualified applicants.** [Application for a permit shall] Each application  
25                                must be [made] signed by the owner or lessee of the building or  
26                                structure, or an agent of either, or by [the] a licensed engineer or  
27                                architect employed in connection with the proposed work. If the

28 application is [made] signed by a person other than the owner [in fee], it  
29 [shall] must be accompanied by a [duly verified] notarized affidavit of  
30 the owner or the qualified [person making the application] applicant that  
31 the proposed work is authorized by the owner [in fee] and that the  
32 applicant is authorized to [make such] sign and file the application.  
33 [The] Each application must contain the full names and addresses of the  
34 owner, lessee, and applicant, and of the responsible officer[,], if the  
35 owner or lessee is a corporate body[, shall be stated in the application].

36 (d) **Description of work.** [The] Each application [shall] must contain a  
37 general description of the proposed work, its location, the use and  
38 occupancy of all parts of the building or structure and of all portions of  
39 the site or lot not covered by the building, and [such] any additional  
40 information [as may be required by] the Director requires.

41 (e) **Plans and specifications.** [The] Each application [for the permit shall]  
42 must be accompanied by [not less than two (2)] at least 2 copies of  
43 specifications and of plans drawn to scale, with sufficient clarity and  
44 detailed dimensions to show the nature and character of the work to be  
45 performed. When a specific quality of materials is essential [for  
46 conformity to] to comply with this [chapter] Chapter, the application  
47 must contain specific information [shall be given] to establish [such] the  
48 required quality. [; and in no case shall] The application must not  
49 simply cite this [chapter] Chapter [be cited] or use the term "legal" or  
50 [its] any equivalent [be used] as a substitute for specific information.  
51 The Director may waive the requirement [for filing] to file plans [when  
52 the work involved is of a minor nature] for minor work.

- (f) **Plot diagram.** [There shall also be filed in duplicate with each] Each application for a building or occupancy permit[,] must include two copies of a plot plan, drawn to scale, showing the:
- (1) [The lot upon which the] proposed [building is to be erected] building's underlying lot, lot dimensions, lot and block numbers, and subdivision name, if any;
  - (2) [Name] name and width of each abutting [streets] street;
  - (3) [Location] location, dimensions, and use of each existing [buildings] building and other [structures] structure on the same lot;
  - (4) [The] location, dimensions, and proposed use of each [buildings] building and other [structures] structure for which a permit is [requested] applied;
  - (5) [Front] width of each front and rear yard [widths]; and
  - (6) [North] north point and scale of the plan.
- (g) **Engineering details.** The Director may require the application to contain adequate details of structural, mechanical, and electrical work, including computations, stress diagrams, and other essential technical data [to be filed]. All engineering plans and computations [shall bear the signature of] must be signed by the engineer or architect responsible for the design.
- (h) **Notice affidavit.** For any building that would be located in the R-40, R-60, R-90, R-150, or R-200 zone, the applicant for any permit to demolish a building, build a new building that will be larger than 200 square feet of gross floor area, or add more than 200 square feet of gross floor area to an existing building, must sign and file an notarized affidavit of notice in a form provided by the Director. The applicant



must attach to each affidavit a copy of the written notice distributed under paragraph 1 and a list of each party who received the notice under paragraph 1 or 2. The affidavit must confirm that, at least 30 days before filing the application, the applicant delivered or sent written notice of the applicant's name, address, and telephone number and information concerning the size, height, setback, and exterior design of each proposed building or addition to:

- (1) any lot owner whose lot abuts or confronts the lot identified in the application;
- (2) any civic and homeowners' associations if the associations' geographic area, as defined by the Planning Board's list and map of civic and homeowners' associations, includes the lot identified in the application.

The affidavit must also confirm that the applicant requested any civic or homeowners' association that received notice under paragraph (2) to notify the applicant of any established design guidelines.

**[(h)] (i) Amendments to application.** Subject to [the limitations of] subsection [(i)] (j) [of this section], [amendments] an amendment to a plan, application, or other [records accompanying the same] document may be filed at any time before [completion of] the work for which the permit is sought or issued is completed. [and such amendments shall] Each timely filed amendment must be [deemed] treated as part of the original application and [shall be] filed [therewith] with it.

**[(i)] (j) Time [limitation of application] limit.** An application for a permit for any proposed work [shall be deemed to have been] must be treated as abandoned [six (6)] 6 months after [date of filing] the application was

filed, unless [such] the application has been diligently prosecuted or a permit [shall have been] was issued. [; except, that] However, for reasonable cause, the Director may [grant one (1) or more extensions of time] extend the time for the Department to consider an application for one or more additional periods which do not [exceeding ninety (90)] exceed 90 days each.

*Approved:*

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Michael J. Knapp, President, County Council

Date

*Approved:*

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Isiah Leggett, County Executive

Date

*This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 15-08

*Building Permit - Notice*

<b>DESCRIPTION:</b>	This amendment to the building permit application provision of the County Code would require an affidavit from certain building permit applicants to assure notice to certain parties, and that the applicant received any neighborhood design guidelines established by the relevant civic or homeowners' association, and would generally amend the provisions for a building permit application.
<b>PROBLEM:</b>	Residents and civic associations currently learn of building permits only after it is issued and posted on the property. A building permit applicant may be unaware of the norms of the neighborhood before submitting their application for a building permit. The current provisions for building permit applications are not concise, precise, and decisive.
<b>GOALS AND OBJECTIVES:</b>	This amendment to the building permit application provision of the County Code would require an affidavit from certain building permit applicants to assure notice to certain parties; and that the applicant received any neighborhood design guidelines established by the relevant civic or homeowners' association, and would generally amend the provisions for a building permit application.
<b>COORDINATION:</b>	Department of Permitting Services
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Jeffrey L. Zyontz
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To the extent that the Department of Permitting Services is issuing permits for land in municipalities, this bill will affect those municipalities.
<b>PENALTIES:</b>	Denial of a building permit application.

## **AGREEMENT IN PRINCIPLE OF THE INFILL DEVELOPMENT TASK FORCE**

The members of the infill development task force have reached an agreement in principle on the legislation and ZTA that comprises the Infill Development Reform Act of 2008. This agreement is contingent on the adoption of final legislative language that is consistent with these principles. On the basis of this agreement in principle, all members of the task force have agreed to either support the legislation or not oppose it, or take any actions or make statements inconsistent with non-opposition.

This agreement in principle encompasses the following issues:

Definition of Infill: The definition will be modified to ensure that the scope of the language captures older, established communities and is not overbroad. It is contemplated that the term "resubdivision" will be substituted for "subdivision" in the context of the ZTA's scope as it pertains to 5 units or fewer, assuming that such a modification does not inadvertently exclude older, downcounty areas. Within the next several weeks, NNCPPC will document the possible impact of using resubdivision as a criterion to confirm the scope of this revised approach is neither overbroad or underinclusive.

Effective Date: The effective date of ZTA 08-11 and 15-08 will be revised: at line 84 add: "Any building permit application filed and accepted as completed by the Department of Permitting Services within 120 days of the effective date may be approved and constructed under the prior standards."

Single Car Garage Exemption: The ITF agreed that single car detached garages are a desirable architectural feature and should be encouraged. Therefore, a homeowner is granted a credit up to 240 SF of a detached single-car garage (i.e. the footprint of the single car detached garage will not be included in the lot coverage calculation). The ITF further agrees that all single car detached garages in R-40, R-60, R-90, and R-200 zones will not be higher than the current regulation in R-40, R-60, and R-90 zones, where the height limit for detached garages is 15 feet to the mean point of the roof and 20 feet to the peak.

Notice Provisions: The notice provision will be altered in the following manner: Strike lines 85 and 86 and insert new language so that the section will now read: "at least 30 days before filing the application, the applicant delivered or sent written notice of the applicant's name, address, and telephone number and non-binding information regarding the non-binding SCOPE OF WORK or a non-binding drawing of each proposed building or addition. Modification to the SCOPE OF WORK or drawings will not give rise to a denial of the building permit or provide a basis of appeal."

“SCOPE OF WORK” is defined as allowable building size, height, and setbacks within the zone classification.

Example: If an applicant submits to DPS, with the building permit application, the required affidavit, including either the non-binding rendering or non-binding scope of work, and lists the contacted parties, then the applicant has fulfilled this notice requirement.

Grandfathering: The grandfathering language will be clarified. To be clear, what this means is that if an existing house exceeds the lot coverage or height limit allowed by the new law, it may be rebuilt to the lot coverage or height existing prior to the date of the adoption of the bill. A house with lot coverage below the current law may be rebuilt no larger than the lot coverage in the new legislation.

Examples: 1) A house that is now at 32% lot coverage is destroyed by fire or another act of God. It may be rebuilt to 32% lot coverage but can not be any larger. 2) A house on a 6,000 SF lot now stands at 25% and is destroyed by fire. It may be rebuilt to 30% lot coverage. 3) If a house on a 6,000 SF lot is at 35% lot coverage and is destroyed by fire or another act of God, it may be rebuilt to 35%. 4) If a house in an R-200 zone is 50 feet tall and is destroyed by fire or another act of God, it may be rebuilt to 50 feet.

Porches and Bay Windows: The language will be clarified to permit an uncovered, unconditioned area above a porch. It is understood that bay windows includes bay windows that provide additional floor space.

Established Building Lines: The following language will be added to the EBL section of the ZTA:

ZTA 08-11 – Standards Residential Zones

1. Line 9: insert after main ‘single family detached residential’ buildings. It is agreed that commercial and/or non-residential buildings should not be included when calculating the EBL; only single family detached residential buildings should be considered for the EBL calculation.
2. Line 39: insert after two adjoining lots ‘*or the applicant may choose to use the front setback of the existing structure that was established prior to demolition, providing that the existing building meets the minimum setback of the zone.*’
3. Lines 41 & 42: delete ‘The engineer or surveyor who signed the survey must also file an affidavit attesting to the accuracy of the survey.’ It is agreed that a survey that is signed and sealed by a licensed engineer or surveyor is sufficient.
4. Line 47: insert after both streets ‘At the option of the applicant, corner lots may use the front setbacks of the adjoining buildings on either side.’  
Line 66: delete ‘before date ZTA enacted’ and insert ‘on or after the effective date’.

(f) **Plot diagram.** [There shall also be filed in duplicate with each] Each application for a building or occupancy permit[,] must include two copies of a plot plan, drawn to scale, showing the:

(1) [The lot upon which the] proposed [building is to be erected] building's underlying lot, lot dimensions, lot and block numbers, and subdivision name, if any;

(2) [Name] name and width of each abutting [streets] street;

(3) [Location] location, dimensions, and use of each existing [buildings] building and other [structures] structure on the same lot;

(4) [The] location, dimensions, and proposed use of each [buildings] building and other [structures] structure for which a permit is [requested] applied;

(5) [Front] width of each front and rear yard [widths]; and

(6) [North] north point and scale of the plan.

(g) **Engineering details.** The Director may require the application to contain adequate details of structural, mechanical, and electrical work, including computations, stress diagrams, and other essential technical data [to be filed]. All engineering plans and computations [shall bear the signature of] must be signed by the engineer or architect responsible for the design.

(h) **Notice affidavit.**

(1) [[For any building that would be located in the R-40, R-60, R-90, R-150, or R-200 zone, the applicant for any permit to:

demolish a building,

build a new main building or add more than 200 square feet of gross floor area to an existing building, must sign and file a

notarized affidavit as described by this subsection, using a form provided by the Director. ]].

For any building permit filed after {effective date} to demolish a building, build a new main building, or build an addition larger than 200 square feet of gross floor area, the applicant must sign and file a notarized affidavit as described by this subsection, using a form provided by the Director if the permit is for work on a lot:

(A) in the R-40, R-60, R-90, R-150, or R-200 zone;

(B) less than 20,000 in land area;

(C) created by a record plat before January 1, 1996 or by a resubdivision containing 5 or fewer lots after January 1, 1996.

(2) The affidavit must confirm that:

(A) at least 30 days before filing the application, the applicant delivered or sent written notice of the applicant's name, address, and telephone number and non-binding information [[concerning the size, height, setbacks, and exterior design of each proposed building or addition to]] the non-binding building size, height, and setbacks or a non-binding drawing of each proposed building or addition to:

(i) any lot owner whose lot abuts or confronts the lot identified in the application; and

(ii) any civic or homeowner's association if the lot identified in the application is in the association's geographic area, as defined by the Planning Board's

list and map of civic and homeowners' associations;  
and

(B) the applicant requested any civic or homeowner's  
association which received notice under subparagraph  
(A)(ii) to notify the applicant of any design guidelines  
established by the association.

(3) The applicant must attach to each affidavit a copy of the written  
notice delivered or sent under this subsection and the name and  
address of each party who received the notice.

(4) Modification to the non-binding building size, height, setbacks,  
or drawings will not result in a denial of the building permit or  
provide a basis of appeal.

[(h)](i) **Amendments to application.** Subject to [the limitations of]  
 subsection [(i)] (j) [of this section], [amendments] an amendment to a  
 plan, application, or other [records accompanying the same] document  
 may be filed at any time before [completion of] the work for which the  
 permit is sought or issued is completed. [and such amendments shall]  
Each timely filed amendment must be [deemed] treated as part of the  
 original application and [shall be] filed [therewith] with it.

[(i)] (j) **Time [limitation of application] limit.** An application for a permit  
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filed, unless [such] the application has been diligently prosecuted or a  
 permit [shall have been] was issued. [; except, that] However, for  
 reasonable cause, the Director may [grant one (1) or more extensions of  
 time] extend the time for the Department to consider an application for



133 one or more additional periods which do not [exceeding ninety (90)]  
134 exceed 90 days each.

135 *Approved:*

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Michael J. Knapp, President, County Council

Date \_\_\_\_\_

137 *Approved:*

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Isiah Leggett, County Executive

Date \_\_\_\_\_

139     *This is a correct copy of Council action.*

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**Linda M. Lauer, Clerk of the Council**

Date \_\_\_\_\_